

IN THE SUPREME COURT OF THE STATE OF ALASKA

HONORABLE MICHAEL J.)
DUNLEAVY, in his official capacity)
as Governor for the State of Alaska,)

Appellant,)

v.) Supreme Court No.: S-18003

THE ALASKA LEGISLATIVE)
COUNCIL, on behalf of THE)
ALASKA STATE LEGISLATURE,)

Appellee.)

Trial Court Case No.: 1JU-20-00938 CI

REPLY IN SUPPORT OF EMERGENCY MOTION TO EXPEDITE APPEAL

Given the Council's failure to offer any concrete assurance that the governor and the state will not be faced with another year in which appointees are summarily rejected from office through legislative inaction, the very real potential exists that the legislature will again decline to meet in joint session and vote to confirm or reject an appointee or appointees. In light of the continuing importance of the dispute at the center of this appeal, the significant ramifications of the superior court's decision on state government administration, and the risks to the state if this issue is not resolved promptly, this appeal is appropriately deserving of expedited review.

The Alaska Legislative Council initiated this lawsuit in late December 2020, arguing at the time that the issues were so critical, and the stakes so high, as to warrant

expedited review of its request for an immediate preliminary injunction.¹ The superior court granted expedited consideration, recognizing at the time that given the issues, prompt appellate review may be necessary.² The parties later briefed the merits of this matter in short order and the superior court—recognizing the importance of the dispute and its potential ramifications—acted swiftly, issuing a final judgment on Thursday, February 25, 2021.³ Yet with a superior court victory in hand, the Council has reversed course, arguing now that expedited consideration of this issue is not required. But none of the Council’s proffered reasons justify delay in hearing the merits of this time-sensitive case, and there are at least three reasons why expedited review is needed.

First, the exigency of the dispute is still very real. The Council suggests that the circumstances giving rise to this case arose solely from HB 309, which the legislature passed last year to extend the timeframe in which the legislature could act on appointments in light of the governor’s public health disaster declaration. [Council’s Opposition to Emergency Motion to Expedite Appeal at 2-3] The Council argues that because it agrees that the Governor has (lawfully) resubmitted the names of last session’s

¹ App. A (Council’s Motion for Expedited Consideration of Plaintiff’s Motion for Preliminary Injunctive Relief Against Governor Dunleavy at pp. 1-2, 1JU-20-938CI, December 28, 2020) (claiming expedited consideration necessary because appointees would continue to act, that any actions appointees make may be ruled unlawful if challenged, and that Council sought preliminary injunctive relief to prevent “immediate and irreparable damage not only to the Legislature’s law-making authority and to the public, but also the integrity of our entire system of government.”).

² App. B (Order granting motion for expedited consideration, 1JU-20-938CI, December 30, 2020).

³ App. C (Final judgment, 1JU-20-938CI, February 25, 2021).

never-voted on appointees to the current Thirty-Second Legislature, and any dispute about the status of *current* appointees will be viewed solely in light of AS 39.05.080(3), a statute that has been in effect for some time, there is no urgency to resolving this case.

[Opposition at 2-3]

On the contrary, the fact that the legislature only recently declined to meet and vote on an entire slate of gubernatorial appointees in the midst of an ongoing pandemic suggests that the legislature could easily do the same thing again this year, when the stakes are even higher. This time there are roughly double the number of appointees at issue, so the ripple effects of a categorical tacit rejection of those appointees is only going to be more starkly felt, and the challenges resulting from a potential swatch of vacancies and required new appointments that much more difficult.⁴ And the Council’s assertion that there is “no evidence” the Legislature will fail to meet in joint session—or fail to vote even if a joint session convenes—is flatly contradicted by its past conduct. Far from “speculating” that the Legislature may again fail to do its job, this Court has evidence of legislative inaction that has and could again easily occur. What’s more, to the extent the Legislature attributes the blame for last year’s inaction to the COVID-19 pandemic, there is no assurance the circumstances have changed. If anything, this week’s events,⁵ which

⁴ See App. B to Governor’s Emergency Motion for Expedited Review, S-18003 (Affidavit of Gina Ritacco).

⁵ “Alaska lawmaker’s positive COVID test disrupts state Capitol, cancels meetings,” Anchorage Daily News, February 25, 2021, *available at*: <https://www.adn.com/politics/alaska-legislature/2021/02/25/tok-lawmaker-tests-positive-for-covid-19-after-attending-event-with-gov-dunleavy/>

the Council alluded to in seeking more time to respond to the motion for expedited review, have only confirmed that COVID-19 poses an ongoing, appreciable risk and may still impact the Legislature’s ability to meet and carry out its work.

The early experience of the COVID-19 pandemic taught Alaska, like the rest of the world, how quickly things can change. On March 29, 2020, the Alaska Legislature went on an extended recess. Just weeks before that date, neither the Legislature nor Alaskans could have envisioned the legislature taking such swift action and adjourning early. The COVID-19 pandemic is not over, and while the legislature may be handling its current COVID-19 outbreak with mitigation protocols, there is no indication of what the future holds or whether events might again take a turn for the worse. In the meantime, Alaska state government is entitled to and must be prepared for those events, and the governor must be able to provide for the efficient and continued operation of the executive branch—including by having certainty over the status of roughly 181 appointed executive branch officials to key positions who the legislature may never vote on.

Further, despite the Council’s expressed confidence that there is “every indication” the Legislature will act before the day the regular session adjourns, other members of the legislature may not share that confidence or may aspire to leave Juneau quickly. Thus the legislature could decline to meet in joint session or adjourn without voting on confirmation as it did last year. Moreover, and as the Council acknowledges, the house failed to organize for over a month, postponing the legislature’s critical work.

[Opp. at 5] The legislature’s need to pass a budget before it adjourns, combined with the loss of meaningful time as a result of house disorganization and COVID-19 to date, only *exacerbates* the risk that it may elect to use its limited remaining time to focus on other matters and ignore or again decline to carry out its constitutional confirmation responsibilities. And should that occur, the governor, the state’s appointed but unconfirmed officials, and everyday Alaskans stand to suffer. The risks of legislative inaction—particularly this year—are far too acute, and the consequences of delay too significant to state government operations, to postpone review of this dispute.

What is more, elsewhere the Legislature acknowledges broader interests in and potential ramifications of this case. For example, in opposing the governor’s limited objection to the Council’s proposed final judgment, the Council argued that given news reports on the potential unknown impacts of the superior court’s order on “a swatch of actions including liquor licenses and oil drilling permits” there is acute public interest in the implications of the court’s order.⁶ It is difficult to see how that interest is served by any delay in a final resolution of this case.

Second, the Council wrongly claims that the governor has an easy remedy if the legislature again fails to act, arguing that the governor can simply call the legislature into a joint or special session. [Opp. at 4] But this argument misperceives the central issue in this case and the relief the governor is requesting, and misconstrues the nature of the

⁶ App. D (Council’s Reply to Governor’s Limited Objections to Proposed Final Judgment, 1JU-20-938CI, February 25, 2021).

governor's authority. Because article III sections 25 and 26 provide that the governor appoints officials "subject to confirmation by a majority of members in joint session," the legislature meeting in joint session alone does nothing to remedy the constitutional and practical harms caused by statutory tacit declination. Only if the legislature meets in joint session *and* holds a vote to confirm or reject appointments has the legislature carried out its constitutional duty. And because the governor has no authority to compel the legislature to vote, his ability to call a joint session does not address or resolve the underlying dispute. In fact, the governor could convene the legislature in joint session under article III § 17 only to have the legislature gavel out and adjourn, without ever voting on a single appointee.

Moreover, the 181 now awaiting confirmation are subject to the statutory language in AS 39.05.080(3), which provides that the legislature's failure to act is tantamount to a declination of confirmation on the day the *regular* session adjourns." And by statute, the legislature "shall adjourn from a regular session within 90 consecutive calendar days, including the day the legislature first convenes in that regular session."⁷ While the legislature may extend the regular session for another 30 days under article II § 8 (and a further ten days with a two-thirds vote of the membership of each house of the legislature), that is distinct from the governor's ability to call a "special session" under

⁷ AS 24.05.150(b).

article II §9.⁸ A special session—whether convened by the governor or legislature—would not preserve any of the appointments currently at issue if the superior court’s judgment stands. To the contrary, if AS 39.05.080(3) is constitutional, the end of the regular session will result in the automatic declination of any appointment not voted on by a joint session, *and* a prohibition against any of those appointees’ reappointment to their positions until the beginning of the next legislative session in 2022.

The issue in this case is a critically important one that could have major impacts on state government and the people of Alaska in the midst of a pandemic, and there are significant risks to not deciding this case in an expedited fashion.⁹ Although it is possible that the legislature will act to confirm appointees before the end of the regular session, the Council has not—and cannot—offer any guarantee that it will do so. At this point, the parties and the Court have approximately six weeks to brief and decide this case before the legislature adjourns. But if this Court does not adopt the governor’s proposed schedule and the legislature adjourns without confirming appointees, the executive

⁸ AS 24.05.090 provides “The legislature shall convene at the capital each year on the third Tuesday in January at 1:00 p.m. Each legislature has a duration of two years and consists of a “First Regular Session” that meets in the odd-numbered years, and a “Second Regular Session” that meets in the even-numbered years, and any special session that the governor or legislature calls.”) And the governor may generally only call a special session with 30 days advance notice, unless, for example, both houses are in regular or special session or the proclamation is issued within one hour after the second house has adjourned from a regular or special session, further constraining the governor’s ability to establish a contingency plan to force a joint session in sufficient time in the manner legislative council suggests. *See* AS 24.05.100(a)(1)(C)-(D).

⁹ *See* Written Statement of Facts in Support of Emergency Motion for Expedited Review, S-18003.

branch will be crippled by the loss of hundreds of state officials until the Court decides the case, likely necessitating a vastly more expedited schedule.

Finally, the Court should decline to order expedited briefing on the 120-day constitutional deadline for adjournment. While the Legislature is apparently willing to ignore statutory language in this instance, by statute the regular session lasts ninety days, and the governor must prepare for and be able to plan for the legislature living up to that deadline regardless of whether the legislature itself chooses to. The Council provides no reason why the Court should assume, particularly in the face of an ongoing pandemic, that further delay is appropriate. Nor does it provide any basis for why it cannot participate in or be prepared for oral argument on or shortly after April 2, 2021.

DATED March 1, 2021

TREG R. TAYLOR
ATTORNEY GENERAL

By: /s/ Janell Hafner
Janell M. Hafner (AK Bar. No. 0306035)
Margaret Paton Walsh (AK Bar No. 0411074)
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IN THE SUPREME COURT OF THE STATE OF ALASKA

HONORABLE MICHAEL J.)
DUNLEAVY, in his official capacity as)
Governor for the State of Alaska,)
)
Appellant,)
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v.)
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THE ALASKA LEGISLATIVE)
COUNCIL, on behalf of THE ALASKA)
STATE LEGISLATURE,)
)
Appellee.)

Supreme Court No.: S-18003

Trial Court Case #: 1JU-20-00938 CI

CERTIFICATE OF SERVICE

I hereby certify, that on this date, true and correct copies of the **Reply in Support of Emergency Motion for Expedited Appeal, Reply to Defendant's Limited Objection to Plaintiff's Proposed Final Judgment, Plaintiff's Motion for Expedited Consideration, Final Judgment, Order Granting Motion for Expedited Consideration**, and this **Certificate of Service** were served via electronic mail or U.S.

Mail on the following:

Hilary V. Martin
Legislative Affairs Agency
120 Fourth Street, Rm. 3
Juneau, AK 99801
via U.S. Mail

Megan A. Wallace
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/s/ Cheryl Burghart
Cheryl A. Burghart
Law Office Assistant I

03/01/21

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

THE ALASKA LEGISLATIVE COUNCIL,
on behalf of THE ALASKA STATE
LEGISLATURE,

Plaintiff,

v.

HONORABLE MICHAEL J. DUNLEAVY,
in his official capacity as Governor for the
State of Alaska,

Defendant.

FILED IN CHAMBERS
STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU
BY: KJK ON: Feb. 25, 2021

Case No. 1JU-20-938 CI

FINAL JUDGMENT

In accordance with its Order Denying Defendant's Motion for Summary Judgment and Granting Plaintiff's Cross-Motion for Summary Judgment, the Court hereby enters its final declaratory judgment in favor of Plaintiff the Alaska Legislative Council, on behalf of the Alaska State Legislature (the "Legislature"), and against Defendant Michael J. Dunleavy, in his official capacity as Governor for the State of Alaska (the "Governor"), as follows:

1. The Legislature validly enacted Chapter 9, SLA 2020 into law, and Chapter 9, SLA 2020 does not violate Article III, sections 25, 26, or 27 of the Alaska Constitution, or the separation of powers doctrine.
2. AS 39.05.080(3) does not violate Article III, sections 25, 26, or 27 of the Alaska Constitution, or the separation of powers doctrine.
3. Article III, sections 25 and 26 of the Alaska Constitution do not require the Legislature to meet in joint session to decline an appointment made under Article III, sections 25 or 26 of the Alaska Constitution.

4. Under chapter 9, SLA 2020, the appointments presented by the Governor to the Legislature during the Second Regular Session of the Thirty-First Alaska State Legislature became tantamount to a declination of confirmation on December 15, 2020, and those appointments were rejected and no longer valid as of December 15, 2020.

5. The Governor had no authority to continue the appointments of appointees presented for confirmation to the Legislature during the Second Regular Session of the Thirty-First Alaska State Legislature on December 16 2020, and his attempt to do so violated chapter 9, SLA 2020, AS 39.05.080(3), and Article III, sections 25, 26 and 27 of the Alaska Constitution.

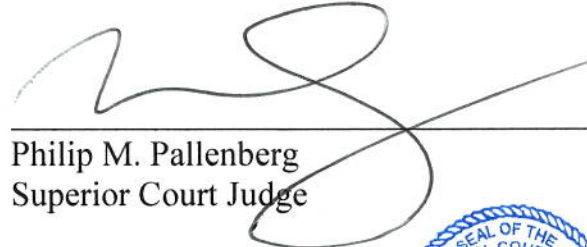
6. On December 16, 2020, the Governor had no authority under Article III, sections 25, 26, or 27 of the Alaska Constitution to reappoint the same persons whose appointments became tantamount to a declination of confirmation on December 15, 2020, and his attempt to do so violated chapter 9, SLA 2020, AS 39.05.080(3), and Article III, section 27 of the Alaska Constitution,

7. The appointments presented by the Governor to the Legislature during the Second Regular Session of the Thirty-first Alaska State Legislature were not valid from December 16, 2020, until the time at which those appointments were, if ever, presented by the Governor to the Legislature during the First Regular Session of the Thirty-Second Alaska State Legislature.

8. This court expresses no opinion about the ability of a person to contest the action of a person whose appointment was not valid from December 16, 2020, until the time in which that

appointment was, if ever, presented by the Governor to the Legislature during the First Regular Session of the Thirty-Second Alaska State Legislature.

Entered at Juneau, Alaska this 25th day of February, 2021.


Philip M. Pallenberg
Superior Court Judge



Certification of Distribution

Wallace Via Email
Martin Via Email
Levin-Walsh Via Email
Milke Via Email
By: A. Holvig Date Feb 25, 2021

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

THE ALASKA LEGISLATIVE COUNCIL,
on behalf of THE ALASKA STATE
LEGISLATURE,

Plaintiff,

v.

HONORABLE MICHAEL J. DUNLEAVY,
in his official capacity as Governor for the
State of Alaska,

Defendant.

FILED IN CHAMBERS
STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU
BY: KJK ON: Dec 30, 2020

Case No. 1JU-20-938 CI

ORDER GRANTING MOTION FOR EXPEDITED CONSIDERATION

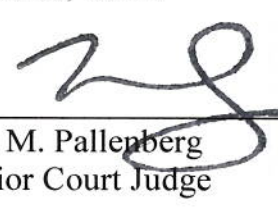
Plaintiff's motion for expedited consideration is GRANTED. Defendant shall file and serve by email his response to the motion for preliminary injunction no later than 12:00 noon on Tuesday, January 5, 2021. Plaintiff shall file and serve by email its reply no later than 12:00 noon on Thursday, January 7, 2021. A hearing on the motion for preliminary injunction is set for Friday, January 8, 2021 at 8:30 am, by Zoom. The court will provide Zoom instructions to counsel separately. The court will make arrangements for public video access to the hearing.

The parties should include in their opposition and reply their respective positions on whether they believe there are factual issues that require testimony to be given in the hearing. If no testimony is offered the court will hear oral arguments. The parties should also give their positions on whether the hearing should be consolidated with the trial on the merits under Rule 65(a)(2), Alaska R. Civ. Pro., in order to allow for prompt appellate review, if necessary.

Entered at Juneau, Alaska this 30th day of December, 2020.

Certification of Distribution

Wallace Via Email
Martin Via Email
Paton Walsh Via Email
Mills Via Email
By: K. Koenig Date: Dec. 31, 2020


Philip M. Pallenberg
Superior Court Judge



1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 THE ALASKA LEGISLATIVE COUNCIL,)
on behalf of THE ALASKA STATE)
4 LEGISLATURE,)

5 Plaintiff,)

6 v.)

7 HONORABLE MICHAEL J. DUNLEAVY,)
in his official capacity as Governor)
for the State of Alaska.)

8 Defendant.)

Case No. 1JU-20-00938 CI

9
10 **MOTION FOR EXPEDITED CONSIDERATION**

11 Pursuant to Alaska Civil Rule 77(g), Plaintiff, the Alaska Legislative Council,
12 moves this Court for expedited consideration of its *Plaintiff's Motion for Preliminary*
13 *Injunctive Relief Against Governor Dunleavy*, an expedited briefing schedule, and
14 expedited oral argument.

15 Expedited consideration is necessary because, at the explicit direction of the
16 Governor, issued December 16, 2020, the Governor's appointees will continue to act
17 despite the Legislature declining their confirmation by failing to meet in joint session to
18 take action on the Governor's appointees. Consequently, any actions that the Governor's
19 appointees make may be ruled unlawful if challenged.¹

20
21 ¹ See *Vidal v. Wolf*, 2020 WL 6695076, at *9 (E.D.N.Y. Nov. 14, 2020) ("Based on the
22 plain text of the operative order of succession, neither Mr. McAleenan nor, in turn, Mr.

1 These actions are not insignificant. The appointees presented for confirmation to
2 the Legislature during the Second Regular Session of the Thirty-First Alaska State
3 Legislature that the Governor has directed remain in their positions include the
4 Commissioner of Revenue.² On December 23, 2020, the Alaska Industrial
5 Development and Export Authority ("AIDEA"), of which the Department of Revenue's
6 Commissioner is a member, voted to authorize up to \$20 million to buy leases in the
7 Arctic National Wildlife Refuge's coastal plain.³

8 Plaintiff's motion seeks to prevent immediate and irreparable damage not only to
9 the Legislature's law-making authority and to the public, but also to the integrity of our
10 entire system of government. Expedited consideration is needed to avoid any further
11 harm to the public.⁴

13 Wolf, possessed statutory authority to serve as Acting Secretary. Therefore, the Wolf
14 Memorandum was not an exercise of legal authority.").

15 ² See 1528 - 1537 House Journal (February 5, 2020).

16 ³ See AS 44.88.030(a) and Alaska State-Owned Corporation Approves Spending up to
17 \$20 Million on Oil Leases in Arctic National Wildlife Refuge, Anchorage Daily News,
18 December 24, 2020 (available at [https://www.adn.com/business-
economy/energy/2020/12/23/alaska-state-owned-corporation-approves-spending-up-to-
20-million-on-oil-leases-in-arctic-national-wildlife-refuge/](https://www.adn.com/business-economy/energy/2020/12/23/alaska-state-owned-corporation-approves-spending-up-to-20-million-on-oil-leases-in-arctic-national-wildlife-refuge/)). Special Assistant Anna
19 MacKinnon participated at the December 23, 2020, AIDEA meeting on behalf of the
20 Commissioner of Revenue.

21 ⁴ As detailed in the underlying motion, nothing in ch. 9, SLA 2020, previously existing
22 statutory law, or the Constitution of the State of Alaska would prohibit Governor
Dunleavy from re-appointing the same appointees after the Legislature begins its new
session on January 19, 2021.

MOTION FOR EXPEDITED CONSIDERATION
Legislative Council v. Dunleavy, Case No. 1JU-20-00938 CI

1 **I. BRIEFING ON MOTION FOR EXPEDITED CONSIDERATION**

2 Plaintiff advised the office of the Attorney General of its intention to file the
3 instant motion in advance of filing this motion.⁵ Plaintiff requests that the Court enter an
4 order directing that Defendant file and serve by email any response to this Motion for
5 Expedited Consideration by noon on Tuesday, December 29, 2020, and Plaintiff file and
6 serve by email any reply by 2:00 p.m. on Tuesday, December 29, 2020. Plaintiff does
7 not request oral argument on this Motion for Expedited Consideration.

8 **II. EXPEDITED CONSIDERATION OF MOTION FOR**
9 **PRELIMINARY INJUNCTION RELIEF**

10 Plaintiff asks the Court to enter an order directing that Defendant file and serve
11 by email any response to *Plaintiff's Motion for Preliminary Injunctive Relief Against*
12 *Governor Dunleavy* by close of business on Wednesday, December 30, 2020, and that
13 the Court set a hearing no later than Thursday, December 31, 2021, to address *Plaintiff's*
14 *Motion for Preliminary Injunctive Relief Against Governor Dunleavy*.

15 The Governor notified the Legislature on December 16, 2020, that he was
16 continuing the appointments of appointees presented for confirmation to the Legislature
17 during the Second Regular Session of the Thirty-First Alaska State Legislature. In light
18 of this action, Legislative Council took quick action and authorized this suit on
19 December 22, 2020, and counsel for Plaintiff have only had a matter of days to prepare
20 *Plaintiff's Motion for Preliminary Injunctive Relief Against Governor Dunleavy*.

21 _____
22 ⁵ See Affidavit, attached hereto as Exhibit A.

1 Without expedited consideration, the Governor's appointees will continue to act despite
2 the Legislature declining their confirmation by law. The reasons for granting expedited
3 consideration are otherwise outlined in *Plaintiff's Motion for Preliminary Injunctive*
4 *Relief Against Governor Dunleavy* filed contemporaneously with this motion.

5 **III. CERTIFICATION OF GOOD FAITH CONFERRAL**
6 **(Alaska Civil Rule 77(g))**

7 As certified in the affidavit that accompanies this motion, counsel for Plaintiff
8 certifies that counsel conferred with the office of the Attorney General on December 22,
9 2020, and placed the office of the Attorney General on notice that Plaintiff would seek
10 this schedule for expedited consideration of *Plaintiff's Motion for Preliminary*
11 *Injunctive Relief Against Governor Dunleavy*.⁶ Counsel for Plaintiff also sent several
12 emails to acting Attorney General Sniffen regarding this case, without response.⁷
13 Counsel for Plaintiff left a voicemail with Assistant Attorney General Margaret Paton-
14 Walsh regarding the Legislature's intention to file the instant motion today.

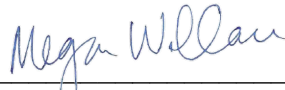
15
16
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19 _____
⁶ See Exhibit A.

20
21 ⁷ Counsel for Plaintiff was contacted by Assistant Attorney General Margaret Paton-
Walsh by voicemail on December 28, 2020, and she did indicate she had been assigned
22 this matter. See Affidavit, Exhibit A.

1 Respectfully submitted this 28th day of December 2020.

2

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Megan A. Wallace, Bar No. 1205024

Director

5

Hilary V. Martin, Bar No. 0505039

Revisor of Statutes

6

Alaska State Legislature, Legislative Affairs Agency,
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ATTORNEYS FOR THE ALASKA LEGISLATIVE
COUNCIL

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MOTION FOR EXPEDITED CONSIDERATION
Legislative Council v. Dunleavy, Case No. 1JU-20-00938 CI

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

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5 Plaintiff,)

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7 HONORABLE MICHAEL J. DUNLEAVY,)
in his official capacity as Governor)
8 for the State of Alaska.)

9 Defendant.)

Case No. Case No. 1JU-20-00938 CI

10 **REPLY TO DEFENDANT'S LIMITED OBJECTION TO PLAINTIFF'S**
11 **PROPOSED FINAL JUDGMENT**

12 Plaintiff the Alaska Legislative Council ("Legislative Council") on behalf of the
13 Alaska State Legislature ("Legislature"), by and through counsel, hereby replies to
14 Defendant's Limited Objection to Plaintiff's Proposed Final Judgment as follows:

15 Defendant objects to inclusion of paragraph 8 of the proposed judgment on
16 grounds that it was not litigated in this case. However, this issue was raised during oral
17 argument on the parties' cross motions for summary judgment, and it is Plaintiff's
18 position that inclusion of this paragraph is necessary to clarify the implications of the
19 Court's Order Denying Defendant's Motion for Summary Judgment and Granting
20 Plaintiff's Cross-Motion for Summary Judgment ("Summary Judgment Order").

1 For example, following the February 18, 2021, Summary Judgment Order, there
2 were news reports indicating that the impact of the Order was unclear.¹ The Anchorage
3 Daily News reported that "[t]he decision by Judge Philip Pallenberg may invalidate all
4 decisions made by those officials during the affected period, possibly affecting a swath
5 of actions including liquor licenses and oil drilling permits."²

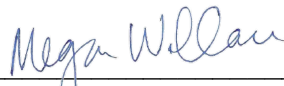
6 While Plaintiff did not request that the Court invalidate the actions of officials
7 taken during the period in question in Plaintiff's Complaint for Declaratory and
8 Injunctive Relief, the Legislature has received numerous questions as to the impact of
9 the Court's recent order, and it is the position of the Plaintiff that it is in the public's
10 interest in retaining paragraph 8 of the proposed judgment, thereby clarifying the impact
11 of the Summary Judgment Order on the actions of persons whose appointments have
12 been determined to not be valid. Plaintiff does not dispute Defendant's observation that
13 "[i]f another action is filed by other parties raising this issue, the court hearing that
14 matter would have jurisdiction to consider the applicability, if any, on the decision in
15 this case."³ Paragraph 8 is consistent with this agreed proposition and therefore should
16 be retained.

17
18
19 ¹ *Judge rules against Gov. Dunleavy in legislators' lawsuit over appointees*, Anchorage Daily
20 News, February 18, 2021 (available at <https://www.adn.com/politics/alaska-legislature/2021/02/18/judge-rules-against-gov-dunleavy-in-legislators-lawsuit-over-appointees/>);

21 ² *Id.*

22 ³ *Ltd. Obj. to Plaintiff's Proposed Final J.*, at p. 1.

1 Respectfully submitted this 25th day of February 2021.

2
3 

4 Megan A. Wallace, Bar No. 1205024

5 Director

6 Hilary V. Martin, Bar No. 0505039

7 Revisor of Statutes

8 Alaska State Legislature, Legislative Affairs Agency,
9 Legal Services

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16 ATTORNEYS FOR THE ALASKA LEGISLATIVE
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